

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* K. JENNINGS, Minor.

UNPUBLISHED  
December 15, 2015

No. 327966  
Kalamazoo Circuit Court  
Family Division  
LC No. 2013-000057-NA

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Before: SAWYER, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

Respondent<sup>1</sup> appeals by right the trial court's order terminating her rights to the minor child under MCL 712A.19b(3)(c)(i) (conditions that led to the adjudication continue to exist), (c)(ii) (other conditions exist), (g) (failure to provide proper care and custody), and (j) (child will be harmed if returned to parent). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

On February 6, 2013, petitioner filed its petition with the trial court for an order taking jurisdiction over the minor child and removing him from respondent's home. The petition alleged that, over the 3-4 month period from October 2012 to the filing of the petition, respondent lived in temporary residences in Kent, Kalamazoo, and Berrien Counties, and that she had failed to provide consistent housing for the minor child. The petition also alleged that respondent had failed to provide the minor child with consistent food on at least two occasions, that the child did not attend school in 2013, and that respondent failed to provide necessary mental health and medical care for the minor child. The petition indicated that the minor child's race was African American.

The trial court referee held a preliminary hearing, and the trial court authorized the petition the same day. The referee did not address whether the minor child had a Native

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<sup>1</sup> Respondent is the mother of the minor child. Respondent father's rights were also terminated as part of this proceeding; respondent father has not appealed that termination. Additionally, respondent is the mother of another minor child who was initially a part of the termination proceedings; however, the trial court released its jurisdiction over that child after the child was placed in a guardianship in July of 2014.

American heritage. As a result of the hearing, the minor child was removed from respondent's home because respondent did not have appropriate housing or resources to care for the child; the child was placed with his grandmother.

Respondent pleaded to the trial court's assumption of jurisdiction on March 26, 2013, admitting that the minor child did not attend school during 2013, and that she had not provided necessary mental health and medical care. The trial court found, by a preponderance of the evidence, a statutory ground for taking jurisdiction over the minor child under MCL 712A.2(b) because respondent had failed to provide necessary care, and entered an order of adjudication.

Following adjudication, respondent was provided with a parent/agency treatment plan. Respondent's barriers to reunification or needs were emotional instability, lack of parenting skills, housing, lack of a social support system, lack of resource availability, and physical health issues.

Over the next two years, the trial court held numerous dispositional hearings. Respondent continued to struggle to find stable housing, while the minor child suffered from numerous cognitive, behavioral, and mental health issues, including assaultive behaviors, which led to his placement in a residential treatment facility called "Christ Child." The minor child was diagnosed with Posttraumatic Stress Disorder (PTSD), Oppositional Defiant Disorder, a mood disorder, Attention-Deficit/Hyperactivity Disorder (ADHD), a learning disorder, and as suffering from childhood neglect. Respondent generally attended parenting times with the minor child at his residential treatment facility. Respondent completed a parenting class and attended some counseling sessions.

The trial court held a termination hearing on May 13, 2015. Tara Renda, the foster care worker assigned to respondent's case, testified that respondent was hospitalized on four different occasions during this case because of her diabetes. Respondent was also unable to work because of her disabilities and received disability payments.

Renda testified that respondent was primarily homeless throughout the pendency of this case. Renda testified that she worked with respondent to help her find housing by improving her credit rating and by trying to help her find subsidized housing. Renda explained that during the pendency of this case, respondent moved back and forth between Kalamazoo and Benton Harbor.

Renda further testified that respondent's repeated changes of location interfered with her ability to consistently receive mental health services. Respondent participated in a psychological examination on March 28, 2013. The examination revealed that respondent had bipolar disorder. Renda agreed with defense counsel on cross-examination that her report to the court had indicated that respondent had been involved with a therapist named Betty Salvatore from August 2013 to August 2014, and that Salvatore had reported to Renda that respondent was "quite motivated" during counseling. However, Renda's report also indicated that Salvatore notified her in August of 2014 that Salvatore had not seen respondent since February of 2014. Renda clarified on redirect examination that respondent only participated in three counseling appointments during 2013, and did not participate in an appointment with Salvatore after

February 2014. Respondent participated in counseling at the end of 2014 and the beginning of 2015 through “Choices for Change.”

Although respondent completed a parenting class, Renda testified that she still had concerns about respondent’s parenting because respondent continued to involve the minor child in conversations that were adult in nature and inappropriate for the child. Renda testified that on one occasion around the beginning of September 2014, respondent told the minor child that a man named George Kelley was his father and allowed the minor child to talk to Kelley via telephone, against Renda’s advice. Renda testified that as a result of talking to Kelley, the minor child went into a “downward spiral” of assaultive behavior and attempts to run away from Christ Child to find Kelley. However, Renda believed that respondent’s parenting time visits were appropriate “[f]or the most part.”

Renda testified that the minor child continued to be placed with Christ Child. The minor child continued to receive counseling and medications for his mental health. The minor child participated in a trauma assessment, which revealed that he had a low IQ and mild cognitive delays. Renda testified that the minor child improved while he was placed with Christ Child; however, he continued to display assaultive behaviors. Renda testified that the minor child loved respondent and that he had a bond with respondent. Nonetheless, Renda opined that Christ Child met the minor child’s physical, medical, educational, emotional, and psychological needs. Renda opined that respondent could not meet those needs if the minor child were returned to her. Renda testified that the minor child needed a stable environment, and that returning him to respondent before respondent had stable housing and the ability to care for him would harm the child.

Renda further opined that the minor child was adoptable, and stated that at least one volunteer at Christ Child had indicated an interest in fostering or adopting him. Renda testified that it was in the minor child’s best interests for him to be placed in a structured environment with people who had special therapeutic training. Renda acknowledged that she had looked for foster homes for the minor child, and did not find one appropriate for him. Renda also acknowledged that the minor child’s behavioral struggles and mental health issues could diminish the chances that he would be adopted. Renda also acknowledged that it could be a year or more before the minor child progressed to the point where he could be adopted.

Respondent testified that she was diagnosed with bipolar disorder and that she continued to take prescribed medication for that condition. Respondent initially testified that she continued to participate in counseling every week with Salvatore, but that she did not provide Renda with information regarding her counseling. Respondent later acknowledged, however, that she only saw Salvatore three times in 2014 and that she stopped seeing Salvatore after she moved to Benton Harbor in February 2014.

Respondent testified that she followed her care plan to manage her diabetes. However, respondent was unable to work or drive because of her diabetes.

Respondent acknowledged that she had moved approximately five times during the three years before the termination hearing. Respondent testified that Renda provided her with

information regarding how to obtain housing, but respondent never had sufficient income to afford housing.

Respondent testified that she was staying with her sister at the time of the termination hearing. She stated that a landlord had told her that she was going to rent her a two-bedroom apartment in Kalamazoo. Respondent believed that she would be able to afford the apartment on her social security disability income. Respondent received \$725 per month in social security disability income. The apartment would cost \$482 per month in rent. Respondent had not yet signed a lease for the apartment.

Respondent testified that her visits with the minor child went well and that she called the minor child each week. Respondent acknowledged that she made a mistake when she introduced Kelley to the minor child and told the child that Kelley was his father. Respondent testified that she was “just so excited” when she found Kelley because she believed that he was the minor child’s biological father, but subsequently cut off Kelley’s contact with the minor child after she learned of the bad choices Kelley had made.

Respondent initially testified that the minor child did not display assaultive behaviors until he was placed with Christ Child. However, respondent subsequently acknowledged that the minor child had a history of exploding at her and becoming violent if she told him “no.” Respondent testified that when the minor child was removed from her, the child was taking medications for his mental health, but that those medications were not working at that time. Respondent testified that she always gave the minor child his medication when he lived with her; however, the trial court pointed out during respondent’s testimony that respondent had testified at the adjudication hearing that the minor child’s medications were not available to him at the time he was removed from her care. Respondent believed that the minor child was not ready to be discharged from Christ Child.

Respondent testified that she had a wonderful relationship with the minor child and that there was a bond between her and the child. Respondent believed that she was the best person to handle the minor child and that her mental health and physical health issues would not be an impediment to her caring for the child.

After hearing the testimony described above, the trial court issued its opinion from the bench. The trial court found that there was clear and convincing evidence of a ground for termination under MCL 712A.19b(3)(c)(i) because the conditions that led to adjudication (homelessness, unemployment, physical health, mental health/emotional stability, parenting skills) continued to exist and there was no reasonable likelihood that the conditions would be rectified within a reasonable time. The trial court found that under MCL 712A.19b(3)(c)(ii), there was clear and convincing evidence that other conditions (not specified by the trial court) existed that caused the minor child to come within its jurisdiction and there was no reasonable likelihood that the conditions would be rectified within a reasonable time. The trial court found that under MCL 712A.19b(3)(g), there was clear and convincing evidence that respondent failed to provide proper care and custody for the minor child and that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time considering the child’s age. The trial court found that under MCL 712A.19b(3)(j), there was clear and convincing evidence that there was a reasonable

likelihood that the minor child would be harmed if he was returned to respondent's home. The trial court also found by a preponderance of the evidence that it was in the minor child's best interests to terminate respondent's parental rights because of the minor child's need for stability and permanency.

On May 13, 2015, the trial court entered its order terminating respondent's parental rights to the minor child. This appeal followed.

## II. ICWA

Respondent contends for the first time on appeal that she is entitled to the conditional reversal of the termination order because the trial court failed to inquire, pursuant to the Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq.*, whether the minor child or his parents were members of a Native American tribe. Because she did not raise this issue before the trial court, we review it for plain error affecting substantial rights. See *Duray Dev, LLC v Perrin*, 288 Mich App 143, 150; 792 NW2d 749 (2010) (review of an unpreserved issue is for plain error affecting the outcome of the lower court proceeding). We agree that the trial court erred in failing to comply with MCR 3.965(B)(2), which provides that during a preliminary hearing in a child protection proceeding, "[t]he court must inquire if the child or either parent is a member of an Indian tribe." However, we find the error harmless in light of the facts of the case.

There is no indication in the record that the minor child had a Native American heritage. A Child Protective Services (CPS) investigation report completed on November 20, 2012 indicated that CPS had asked respondent whether she had a Native American heritage, and that respondent replied that she did not have such a heritage. Respondent's initial service plan indicated that questions were asked regarding whether the minor child was Native American, which questions were answered in the negative. Wherever the minor child's race was stated throughout the lower court record, the child's race was stated as "Black" or "African American." Additionally, respondent does not claim on appeal that the minor child has a Native American heritage. Respondent is not entitled to relief because, even though the trial court erred, respondent has not showed that the result of the proceeding would have been different, e.g. that the minor child would have been entitled to the application of protections for Native Americans available under the ICWA. Cf. *In re Johnson*, 305 Mich App 328, 330, 332; 852 NW2d 224 (2014) (conditionally reversing termination of parental rights when the trial court received notice of the child's potential Native American heritage during a preliminary hearing but never made a finding under MCR 3.965(B)(2)).

## III. BEST-INTEREST DETERMINATION

Respondent also argues that the trial court erred in determining that termination was in the minor child's best interest. We disagree.<sup>2</sup>

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<sup>2</sup> Respondent does not challenge the trial court's findings regarding the statutory grounds for termination on appeal. Nevertheless, only one statutory ground for termination must be

After the trial court determines that a statutory ground for termination has been established by clear and convincing evidence, the court shall order termination of parental rights if it finds by a preponderance of the evidence “that termination of parental rights is in the child’s best interests[.]” MCL 712A.19b(5); see *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). “In deciding whether termination is in the child’s best interests, the court may consider the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.” *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). A trial court’s factual findings in terminating parental rights, including a finding that termination is in a child’s best interests, are reviewed for clear error. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Here, the trial court found by a preponderance of the evidence that it was in the minor child’s best interests to terminate respondent’s parental rights because of the minor child’s need for stability and permanency. Respondent argues that finding was clearly erroneous because it was highly unlikely that the child would be adopted.

The minor child was nine years old at the time of termination. Renda testified that the minor child needed a stable environment, and that respondent could not meet the minor child’s physical, medical, educational, emotional, and psychological needs if the minor child were returned to her. Renda testified that the minor child was adoptable and that at least one volunteer with the minor child’s residential placement had indicated an interest in fostering or adopting him. Renda acknowledged that she had looked for foster homes for the minor child, and did not find one appropriate for him. Renda also acknowledged that the minor child’s significant behavioral struggles and mental health issues could diminish the chances that he would be adopted. Renda also acknowledged that it might be a year or more before the minor child progressed to the point where he could be adopted.

Additionally, a therapeutic court report submitted on May 5, 2015 by the minor child’s residential placement indicated that the minor child had made minimal progress on his therapeutic goals during the previous 60 days, that there was an increase in his verbal and physical aggression, and that he continued to be easily agitated and frequently responded to anger and frustration with aggression. However, the residential staff believed that the increase in the minor child’s negative behaviors occurred because of the “on-going termination of his mother’s rights” and his confusion regarding whether respondent’s rights would be terminated. The report also indicated that the minor child’s therapy was ongoing and that his behaviors at school had improved.

In sum, while portions of Renda’s testimony and the therapeutic court report supported a finding that the minor child would struggle to be adopted for at least a year or more, other portions of Renda’s testimony and the report supported a finding that the minor child needed stability that respondent could not provide, and that the minor child could be adopted. The trial

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established by clear and convincing evidence. *Trejo*, 462 Mich at 360. Our review of the record indicates that the trial court did not err in finding that at least one statutory ground for termination under MCL 712A.19b(3) was established.

court found that it was likely that the minor child would be adopted. Further, regardless of the child's adoption prospects, the trial court heard evidence that the child had benefitted from his current placement. The trial court's finding regarding the minor child's need for permanency and stability was supported by a preponderance of the evidence and was not clearly erroneous. MCR 3.977(K); *Trejo*, 462 Mich at 356-357.

Respondent also argues that her bond with the child and her efforts at improving her parenting ability weighed against a finding that termination was in the minor child's best interests. These claims are not fully supported by the record; for example, Renda testified that she was concerned about respondent's tendency to involve the child in inappropriate conversations. The trial court may determine the best interests of the child using evidence from the whole record. *Trejo*, 462 Mich at 353. Further, a child's need for permanency and stability can outweigh the bond between parent and child. See *In re LE*, 278 Mich App 1, 29-30; 747 NW2d 883 (2008). Here, the trial court properly considered the minor child's need for stability in finding that termination was in his best interests. That finding was not clearly erroneous. MCR 3.977(K); *Trejo*, 462 Mich at 356-357.

Affirmed.

/s/ David H. Sawyer  
/s/ Jane M. Beckering  
/s/ Mark T. Boonstra